REMARKS

I. Status of the Subject Application

Claims 1-163 are pending in the subject application. Claims 1-17, 24-34, 42-109, 112-125, and 128-163 are deemed withdrawn without disclaimer or prejudice. Claim 164 has been canceled without disclaimer or prejudice. Applicant reserves the right to pursue patent protection for the subject matters of those withdrawn claims in subsequent divisional application(s). Claims 18-23, 35-41, 110, 111, 126 and 127 stand rejected. In the present Amendment, Applicant has amended claim 18.

II. Double Patenting Rejection

Claims 18-23, 35-41, 110, 111, 126 and 127 have been provisionally rejected on the ground of statutory obviousness-type double patenting as being unpatentable over claims 26-28 of co-pending Application Serial No. 11/019,143, which is also owned by Applicant.

Due to the "provisional" nature of this rejection, Applicant respectfully requests that such rejection be held in abeyance until all of the claims of the subject application are otherwise deemed to be allowable or are canceled, at which time Applicant will address such rejection.

III. The Rejection Under 35 U.S.C. § 103

Claims 18-23, 35-41 and 110, 111 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,048,257 to Luedtke. In particular, the Official Action provides that "Luedtke discloses a construction system comprising a lower support structure 50; a bearing wall 10 having a plurality of vertically extending studs 16 to the lower support structure; the vertical studs obviously extended between upper and lower support structures or tracks having a U-shaped in cross-section, a joist rim 58 on the lower support structure adjacent to at least some of the vertically extending studs 16; the joist rim 58 to at least some

of the vertically extending studs 16; a plurality of floor joists 48 to the joist rim; and a floor deck 14 on the plurality of floor joists (see FIG. 1). Luedtke discloses the claimed invention as stated but does not disclose expressly the method steps such as constructing a lower support structure; affixing a bearing wall having a plurality of vertically extending studs to the lower support structure; supporting a joist rim on the lower support structure adjacent to at least some of the vertically extending studs; affixing a plurality of floor joist to the joist rim; and supporting a floor deck on the plurality of floor joists. Examiner considers this to be the obvious method of setting up Applicant's device because in constructing a bearing wall, one must obviously position a plurality of studs along a lower support structure, join [sic-joint] flooring joists to joist rim and placing floor deck on top of the flooring joists. Luedtke would be motivated to follow these steps to facilitate a bearing wall and floor."

Responsive to this rejection, Applicant respectfully submits that the wall and floor arrangement of Luedtke is very different from the construction method of amended claim 18. Luedtke discloses a "method of constructing multiple story buildings and particularly detention structures as disclosed in which the framing members are lightweight steel channel members which are generally similar and in certain applications, interchangeable. The walls and floors of the building are framed with the channel members and lath sheathing is applied thereto for receiving cementitious fill therebetween." See, Abstract of Luedtke. Further, as can be seen in FIG. 1 of Luedtke, to attain the desired strength and loading capabilities, concrete must be poured in the cavity of the floors and the wall. Reinforcing steel bars are also included in the cavity. Prior to attaching the substrate, a metal lath is fastened to "Z" shaped furring/angles. The furring/angles are attached to the studs to increase the depth of the wall. While such a system would produce an acceptable final structure; it would be expensive and time consuming to employ.

The Luedtke arrangement of Fig. 1 is fundamentally different from the invention of claim 18. For example, Luedtke provides that "[t]he stud members are inserted into top and bottom U-shaped tracks 20, through apertures 22 formed therein." Column 4, lines 61-63 of

Luedtke. Luedtke also teaches that "[f]loor 14 is built of light gauge metal joists 48 inserted into generally u-shaped tracks 50 and fastened thereto by welding or other suitable operation." Column 5, lines 18-20 of Luedtke. As can be seen in FIG. 1 of Luedtke, the lower leg of the u-shaped track 50 is supported on the upper track 20 of the lower wall. The lower track 20 of the upper wall us supported on the upper leg of the u-shaped track 50 as well as the upper legs of the joists 48.

Amended claim 18, to the contrary, provides that the method thereof includes "affixing the web of the joist rim to at least some of the adjacent vertically extending studs." That action differs from the actions employed to construct the arrangement depicted in FIG. 1 of Luedtke.

The Official Action provides that "Examiner considers this to be the obvious method of setting up applicant's device because in constructing a bearing wall, one must obviously position a plurality of [of] studs along a lower support structure, join [sic-joint] flooring joists to joist rim and placing [a] floor deck on top of the flooring joists. Luedtke would be motivated to follow these steps to facilitate assembly [of] a bearing wall and floor." Responsive to these assertions, Applicant submits that there is no teaching in Luedtke that would have lead the person of ordinary skill in the art to attach the web of the U-shaped members 50 to the studs. Such arrangement would alter the loading arrangements experienced by the wall.

Turning next to independent claim 35, that claim recites in part:

> "affixing a joist rim to the bearing wall such that a planar rim flange of the joist rim is substantially co-planar with the planar track web of the upper track;"

In the embodiment depicted in FIG. 1 of Luedtke, the lower track 20 of the upper wall is supported on the track 50. The planar rim flange is not substantially co-planar with the planar track web of the upper track. In the embodiment depicted in FIGS. 3-5 of Luedtke, the lower track 98 of the upper wall is received on floor joist receiving tracks 128. The flanges of

the tracks 128 are not substantially co-planar with the web of track 98. Notably, Luedtke provides:

> FIG. 5 is a partial isometric view of a continuous floor topping slab 168 at a bearing wall and floor intersection in the middle portion of a wall panel. The view shows upper and lower U-shaped track members 98 with opposed vertical legs 99 which receive the spaced apart light metal studs. The track members 98 of adjacent upper and lower floors are spaced by floor joist receiving tracks 128. These tracks 128 receive floor joists 126, which normally have the same lateral spacing as studs 96. Light metal angles 170 are fastened to vertical structural members 96 at the finished elevation of floor topping 168. The cementicious slab or topping 168 is placed upon metal sheathing/decking 164 which is fastened to the light metal floor joists 126. The ends of the joists may be braced with bearing clips 172 or angles to carry loads from studs 96. The cementicious slab 168 is poured and screeded using angle 170 as a screed. The poured fill 168 is also placed between studs 96 over the top of the track 98 to the bottom of or higher than the bottom of angle 170. <u>This allows the cementicious fill 168 to be continuous across the base of the wall and thus forms a continuous diaphragm slab that is poured after the light gauge framing construction is completed</u>.

Column 8, lines 42-64 of Luedtke (emphasis added). As can be appreciated from this discussion, the planar rim flange is <u>not</u> substantially co-planar with the planar track web of the upper track in this embodiment of Luedtke. The upper track 98 is placed <u>on top of</u> the tracks 128 and the poured fill 168 is poured into that track as illustrated. The planar rim flange is <u>not</u> substantially co-planar with the planar track web of the upper track and there is no teaching in Luedtke that would have lead the person of ordinary skill in the art to make such modification.

With respect to independent claim 110, that claim provides:

> attaching the top portions of the studs to first and second header flanges of a <u>combination header and joist rim having a plurality of first joist attachment tabs integrally formed in the first header flange at first predetermined intervals</u>;

Luedtke fails to disclose such an element and there is no teaching present that would have led the person of ordinary skill in the art to make such modifications. This reasoning applies with equal force to independent claim 111. Accordingly, a *prima facie* case of obviousness has not been established over Luedtke.

IV. Petition For Extension of Time

Applicant hereby petitions for a three month extension of time. The PTO is hereby authorized to charge Deposit Account 11-1110 for the petition fees and any fees associated with this Amendment. If additional time is required, please consider this a petition therefor.

V. Other Pending Applications

Applicant also owns U.S. Patent Application Serial No. 11/019,143, filed December 21, 2004, which is a continuation-in-part application of the subject application (the "CIP application"). A non-final Official Action issued on May 8, 2008 in connection with the CIP application. Applicant has not yet responded to that Official Action. Copies of the documents may be obtained from the PTO's PAIR database. However, Applicant would be pleased to supply copies of any documents relating to the CIP application upon request.

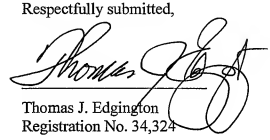
VI. Conclusion

Applicant respectfully submits that all of the claims presented in the present application are in condition for allowance. Applicant's present Amendment should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicant reserves the right to specifically address all such assertions and statements in subsequent responses. Applicant also reserves the right to seek claims of a broader or different scope in a continuation application.

Applicant has made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining

concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,



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